Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Time Warner Telecom Inc.,	)	
	)	
Complainant,	)	
	)	
v.	)	File No. EB-00-MD-04
	)	
Sprint Communications Company L.P.,	)	
	)	
Defendant.	)	
	)	

SUPPLEMENTAL RESPONSIVE BRIEF OF SPRINT COMMUNICATIONS COMPANY L.P.

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December 15, 2000

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SUMMARY

Because it is the complainant, TWTC has the burden of establishing that the Commission has jurisdiction in this matter. TWTC did not meet its burden in its earlier pleadings. Nor has it done so in its latest brief which is specifically limited to whether based on "relevant statutory language, legislative history, and statutory purpose" the Commission has such jurisdiction.

For example, TWTC's discussion of the relevant statutory provisions and legislative history of the complaint provisions of the Act is limited to showing that TWTC is a "person" entitled to bring a complaint against a common carrier for violations of the Act. But, such discussion is irrelevant to the question of jurisdiction at issue in this proceeding. Rather the relevant question here is whether the Commission has been given jurisdiction under Sections 206 and 208 of the Act to adjudicate the rights of a common carrier against its customers. And it is clear from both the unambiguous statutory language of Sections 206 and 208 as well as the legislative history of such provisions that the Commission has not been given such jurisdiction. This is so because the complaint provisions of the Act were lifted from the Interstate Commerce Act and such ICA provisions did not give the agency authority to adjudicate claims by a carrier against its customer.

TWTC stab here at establishing jurisdiction here is based on the argument that a customer's failure to pay for service constitutes self-help in violation of Section 201(b). However, TWTC's argument is devoid of any analysis based on statutory language and legislative history of Section 201(b) as required by the Commission. TWTC's failure in this regard is hardly surprising. Section 201(b) cannot reasonably be read to include as a violation the alleged failure of a customer to pay the bills remitted by a common carrier for the provision of common carrier service. That section imposes duties upon carriers in their provision of

telecommunications services to their subscribers "Self-help" simply does not involve the provision of common carrier services. Rather, "self-help" involves a case where a subscriber who allegedly has not paid its bills for the telecommunications services provided by a common carrier asks that the Commission enjoin the carrier from terminating service.

TWTC now argues that the traditional concept of "self-help" should be revised for the purpose of deciding its complaint. TWTC's new definition assumes some of the facts of the case at bar and enumerates those facts as the elements necessary to constitute "self-help." TWTC then claims, nakedly, that the presence of these elements is a violation of the Act. In any event, a cursory examination of the elements put forward by TWTC demonstrates the inconsistencies of the test it has created for a violation of the Act with the actual governing statutory language. The first element -- an IXC's "failure to pay tariffed rates for exchange access" provided by a LEC is too narrow since it grant only telecommunications carriers, and not other individuals, the right to have collection actions their carrier-customers heard by the Commission. Thus, it conflicts with the definition of "person" in Section 206 and 208. TWTC's second element -- the bundling of an input -- here, exchange access -- by an IXC into its own offerings -- is too broad since an IXC's provision of telecommunications services involves the bundling of a plethora of goods and services provided by a whole host of vendors. And TWTC's third element -- the failure of the IXC customer to terminate the CLEC's provision of access services -- conflicts with TWTC's position elsewhere before the Commission that IXCs should not be allowed to terminate such service.

Finally, TWTC's standard for Commission jurisdiction based as it is on the Commission's statutory mandate is to promote competition in the telecommunications marketplace is so amorphous as to be no standard at all.

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Defendant.	)	
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SUPPLEMENTAL RESPONSIVE BRIEF OF SPRINT COMMUNICATIONS COMPANY L.P.

Defendant Sprint Communications Company L.P. ("Sprint"), in accordance with the schedule established by the Enforcement Bureau staff in a telephone status conference on November 20, 2000, hereby submits its supplemental brief in response to the opening brief regarding the Commission's jurisdiction (hereafter cited as "JB at __") of complainant Time Warner Telecom Inc. ("TWTC") in the above-captioned proceeding.

BACKGROUND

The Enforcement Bureau has directed the parties to file supplemental briefs on the question of "whether the Commission has jurisdiction over this action under section 208 of the Communications Act of 1934, as amended, 47 U.S.C. §208." In particular, the parties are to examine this question "as a statutory matter of first impression"; that they "should not rely on or discuss prior Commission decisions that may be relevant to this question"; but that, instead, the parties should analyze "relevant statutory language, legislative history, and statutory purpose." Moreover, if the parties argue that, as a matter of policy, the Commission should "entertain[]

actions of this nature," such arguments should be presented in "the context of the hypothetical scenarios" posited by the staff during the conference. Dear Counsel Letter dated November 22, 2000 from David Strickland, FCC at 1.

Because it is the complainant, TWTC has the burden of establishing that the Commission has jurisdiction in this matter. TWTC has not met such burden. In fact, in its earlier pleadings, TWTC has all but ignored Commission and court decisions demonstrating that the Commission lacks the statutory authority to entertain an action that involves adjudicating a carrier's rights against one of its customers.[1]

Instead, TWTC has relied upon a number of Commission cases which it says establishes the Commission's authority to hear and decide complaints by carriers against their customers for non-payment of service. According to TWTC, those cases found that the failure of a customer to pay the carrier amounted to "impermissible self-help" by such customer in violation of the Section 201(b) of the Act. *See, e.g.,* TWTC's Initial Brief at 14-17. But the Commission recently rejected the notion that the cases relied upon by TWTC here established that "self-help" is an impermissible violation of Section 201(b). *See Bell Atlantic -Delaware, et al. v. Global NAPs, Inc., Memorandum Opinion and Order*, FCC 00-383 (released October 26, 2000) at ¶¶26, 29 ("*Global NAPs*"). The Commission explained that "[e]ach of those cases arose in the context of requests for emergency or interim relief in which the [customer] movants sought to avoid

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[1] *Illinois Bell Telephone Co. et al. v. AT&T*, 4 FCC Rcd 5268 (1989), *recon. denied,* 4 FCC Rcd 7759 (1989); *Tel-Central v. United*, 4 FCC Rcd 8338 (1989); and *Long Distance/USA, Inc. et al. v. The Bell Telephone Company of Pennsylvania, et al.*, 7 FCC Rcd 408 (CCB 1992); *Thornell Barnes Co. et al. v. Illinois Bell Telephone Company*, 1 FCC 2d 1247, 1275 (¶67) (1965); *MCI v. FCC,* 59 F.3d 1407, 1418-19 (D.C. Cir. 1995).

disconnection of telephone services for failure to pay their bills." *Id.* at ¶29.[2] Thus, those cases do not in any way support the notion that a customer violates Section 201(b) by simply refusing to pay a contested bill. Nor do these cases otherwise support the notion that the Commission can assert jurisdiction in order to become the collection agent for the carrier demanding unpaid charges. Rather, the self-help cases turned on the customer's right to continue receiving service without paying for such service. Such right is obviously not at issue here.

TWTC's latest stab at establishing Commission jurisdiction in its opening brief is equally flawed. Although TWTC does refer to the relevant statutory provisions, it ignores language in those provisions which clearly and unambiguously demonstrate that TWTC has no entitlement to have a complaint against a customer adjudicated by the Commission. Although TWTC's discussion of the legislative history correctly points out that the applicable provisions of the Communications Act are based upon comparable provisions of the Interstate Commerce Act, JB at 7, TWTC fails to discuss any ICC precedent that would inform the interpretation of the jurisdictional reach of these provisions. And, although TWTC points out that the Commission's

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[2] The Commission's decision in *Global NAPs* did not discuss *MGC v. AT&T*, 14 FCC Rcd 11647 (1999) *application for review on other grounds denied*, 15 FCC Rcd 308 (1999). Throughout this proceeding TWTC has repeatedly argued that the *MGC v. AT&T* decisions establish that carriers have the right under the Act to sue their customers for non-payment before the Commission. It continues to advance this argument in its brief here. *See* JB at 14 (the *MGC v. AT&T* decision is "binding and relevant precedent" which the "Commission cannot ignore"). In fact, TWTC claims that a Commission finding that it does not have jurisdiction here would "constitute a radical departure from its own precedent" for which the Commission would have to present a "reasoned analysis." *Id.* citing *Greater Boston Television Corp.* 444 F.2d 841 (D.C. Cir. 1970). The difficulty with TWTC's argument is that it is the Commission's *MGC v. AT&T* decisions that constitute a "radical" and unexplained departure from the Commission's long-standing and consistently-applied holdings regarding its statutory authority to hear carrier complaints against their customers. *See* cases cited in fn. 1 *supra.* The basis for explaining any departure from *MGC v. AT&T* is, therefore, already at hand. It has been set forth repeatedly in the Commission's earlier decisions.

statutory mandate is to promote competition in the telecommunications marketplace, using such mandate for the assumption of jurisdiction by the Commission in this matter is a "standard" so amorphous that the Commission would be able to assert jurisdiction over any and all matters involving carriers regardless of how remotely such matters involved the carrier's actual provision of telecommunications services. These arguments are discussed further below.

ARGUMENT

A. TWTC's Status As A "Person" Under The Act, Standing Alone, Does Not Entitle It To Adjudicate Claims Against Its Customers Before The Commission.

TWTC argues at length that it is a "person" within the plain meaning of the Section 207 of the Act and is, therefore, entitled to bring a complaint against a carrier for violations of the Act under that section as well as Section 208. JB at 3-6. It also argues at length that the legislative history of Sections 207 and 208 enables common carriers to bring complaints against other common carriers before the Commission. *Id.* at 6-9. But its arguments here are simply beside the point. There is no question that TWTC is a "person" within the meaning of Section 207 and 208. Nor is there any question that a common carrier like TWTC is entitled to file a complaint before the Commission under Section 208 against another common carrier alleging that such common carrier has violated its duties under the Title II of the Act in the provision of its common carrier services to its customers. But these questions are irrelevant to this proceeding.

Rather the relevant question here -- and the one that TWTC has avoided addressing in its opening brief -- is whether the Commission has been given jurisdiction under Sections 206 and

208 of the Act to adjudicate the rights of a common carrier against its customers.[3] Sprint has previously explained that, based on long-standing Commission precedent, the Commission lacks such jurisdiction, even if the customer is a common carrier and is otherwise subject to the Commission's jurisdiction. *See e.g.,* Motion to Dismiss filed April 5, 2000. And, it is clear that such Commission precedent is firmly grounded on the unambiguous statutory language of Sections 206 and 208 as well as the legislative history of such provisions.

B. TWTC's Claims To The Contrary Notwithstanding, The Commission Does Not Have The Power To Adjudicate Claims By Carriers Against Their Customers.

There can be no question that "...Congress borrowed heavily from the Interstate Commerce Act when it drafted the Communications Act of 1934..." *MCI v. FCC*, 59 F.3d at 1418.[4] In fact, the complaint provisions included in the Communications Act were virtually identical to the complaint provisions in the ICA. As both the Senate and House Committee Reports explained:

> Sections 206, 207, 208 and 209 are the present law in sections 8, 9, 13(1) and (2) and 16(1) of the Interstate Commerce Act and deal,

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[3] Even though Sprint is a common carrier, it is being sued in its capacity as a customer of TWTC's access services. Thus, TWTC's tariffs, which TWTC contends are applicable here, at least for a portion of the period at issue, define a customer as "[a]ny person, firm, partnership, corporation or other entity which uses service under the terms and conditions of this document and is responsible for the payment of charges." TWTC's Tariff No. 3 Original Page 10, attached as Exhibit I of TWTC's Initial Brief filed July 28, 2000.

[4] *See, e.g., AT&T v. Northwestern Bell Telephone Company*, 5 FCC Rcd 143, 151 (fn. 55) (1989) (Because the complaint provisions of the Communications Act "were lifted from the ICA [Interstate Commerce Act] and have remained essentially unchanged since that time ... the Commission often looks to cases decided under the ICA for guidance in deciding complaint cases."); *MCI v. FCC*, 59 F.3d 1407, 1418 (D.C. Cir. 1995) ("Because the Congress borrowed heavily from the Interstate Commerce Act when it drafted the Communications Act of 1934 ... both this court and the [FCC] often turn to decisions under the ICA for guidance in interpreting the Communications Act."); and *MCI v. FCC*, 917 F.2d 30, 38 (D.C. Cir. 1990) ("The Communications Act, of course, was based upon the ICA and must be read in conjunction with it.").

respectively, with liability for damages, complaints, reparations and orders for the payment of money.[5]

The then "present law" covering a carrier's liability for damages under the ICA (Section 8 of the ICA on which Section 206 of the Communications Act is based) was "asymmetric in the sense that, although the shipper or subscriber may seek recovery of damages from the carrier before the agency, the agency [was] given no authority to adjudicate claims by the carrier against its customer."[6] The ICC articulated this principle in its decision in *Laning-Harris Coal & Grain Co. v. St. L. & S.F.R. Co.*, 15 ICC 37 (1909). That case *Laning-Harris* involved the argument by a railroad that it be allowed to set-off the amount it admittedly overcharged a customer in 1906-07 by the amount it undercharged the same customer in 1902-03. The ICC rejected such argument. It explained that it "is not authorized to adjudicate the claim of a railroad company against a shipper but only the claim of a shipper against a railroad company" and the awarding of a set-off" amounts to the same thing as adjudicating the claim of the railroad company against the shipper..." *Id.* at 38. *See* also *Breece Veneer Co. v. Chesapeake & Ohio Ry. Co.*, 182 ICC 690 (1932) (ICC awarded customer reparations for overcharges but refused to consider the fact that the customer had not paid the charges due for a different shipment of the same commodity); *Pennsylvania R. Co. v. Fox & London, Inc.*, 93 F.2d 669, 670 (2nd Cir. 1938) ("...the Interstate Commerce Commission only has such jurisdiction as has been conferred upon it by Congress

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5 Communications Act of 1934, S Rep. No. 781 73rd Congress 2d Session (1934) reprinted in M. Paglin, A Legislative History of the Communications Act of 1934 (Oxford University Press 1989) ("Paglin's Legislative History") at 714; Regulation of Interstate and Foreign Communications by Wire and Radio, or for Other Purposes, HR Rep. No. 1850, 73rd Congress 2d Session (1934) reprinted in "Paglin's Legislative History" at 723.

6 Kenneth A. Cox and William J. Byrnes, "The Common Carrier Provisions -- A Product of Evolutionary Development," Paglin's Legislative History at 37.

and that does not give it the power to make orders adjudicating claims of carriers against shippers and requiring the payment of such claims.").

Given these ICC precedents, this Commission had no choice but to adopt the asymmetric paradigm of the ICA regarding the reach of the agency's adjudicatory authority. The Commission made this clear in its decision in *Thornell Barnes,* 1 FCC 2d at 1275 (¶67), where citing *Laning-Harris,* the Commission found that is was improper to set off against the amount of an overcharge awarded to a customer as damages, an amount that the customer was undercharged. The Commission explained that "this would involve a determination of a carrier's rights against a subscriber, over which this Commission has no jurisdiction."

Moreover, when the Commission did determine a carrier's rights against its customer, the D.C. Circuit ruled that such determination was *ultra vires*. In *MCI v. FCC*, 59 F.3d at 1417-1419, the Court vacated the Commission's decision allowing the LECs that were found to have exceeded the authorized rate of return in their provision of certain access services during a particular monitoring period to offset the amounts owed to the IXCs by amounts the LECs allegedly "underearned" on other access services during the same monitoring period. The Court explained that the Commission's approach of "folding the carrier's undercharge for one service into its evaluation of the actual damage that the customer suffered by reason of being overcharged for another" was "inconsistent not only with the Commission's own precedent [in *Thornell Barnes*] but also with the course that the ICC took in the aftermath of *Laning-Harris*." Thus, the Court held that "the Commission's attempt to justify its allowance of offsets here is contrary to both its own precedent and to ICC's longstanding interpretation of the cognate provisions of the ICA." *Id.* at 1418-19. Notably, the LECs' customers involved in that case, were, as here, other common carriers.

Any reasonable interpretation of the language in the "cognate provisions" of the Communications Act also leads to the inescapable conclusion that the Commission does not have jurisdiction in this case. Section 206 of the Act, for example, states that a carrier is liable for damages sustained by any person or persons if the carrier "shall do, or cause to or permit to be done, any act, matter, or thing in this Act prohibited or declared to be unlawful, or shall omit to do any act, matter, or thing in this Act required to be done...." Similarly, Section 208 enables any person to bring an action before the Commission "complaining of anything done or omitted to be done by any common carrier, subject to this Act, in contravention of the provisions thereof...." Thus, the clear and unequivocal language in both provisions requires the person filing a complaint before the Commission against a common carrier to assert and demonstrate that a common carrier has violated some provision of the Act.

TWTC only briefly refers to Section 206 and makes no attempt to analyze the specific language set forth therein or, for that matter, the legislative history and case precedent that could inform such analysis. JB at 2, 4. Moreover, as stated, its discussion of Section 208 concentrates on proving that it is "person" within the meaning of that provision -- an issue which is not in controversy in this proceeding -- and that as a person, it is entitled to have the Commission act as its collection agent for charges allegedly unpaid by Sprint because such non-payment violates the Act. TWTC argues that "[t]he statutory language in Sections 207 and 208 unambiguously confers upon the Commission jurisdiction to hear complaints by any persons against common carriers alleging violations of the Act." JB at 6. There is no dispute that the Commission has jurisdiction to hear and remedy violations of the Act. But the issue here is whether a violation of the Act has occurred.

TWTC's only attempt to show such a violation is to dress up the customer's failure to pay as being a violation of Section 201(b) of the Act. However, TWTC has provided no analysis of the "relevant statutory language, legislative history, and statutory purpose" of Section 201(b) (as specifically requested by the Commission) which would even contemplate that a customer's failure to pay is a violation of the that provision. TWTC's failure in this regard is hardly surprising. Section 201(b) cannot reasonably be read to include as a violation the alleged failure of a customer to pay the bills remitted by a common carrier for the provision of common carrier service.

To put it quite simply, Section 201 clearly and unambiguously imposes duties upon carriers in their provision of telecommunications services to their subscribers, but not on their role as customers in their taking of such services from other carriers. For example, under Section 201(a) "every common carrier engaged in interstate and foreign communications by wire or radio" has the duty "to furnish such communication service upon reasonable request therefor." Under Section 201(b), "[a]ll charges, practices, classifications, and regulations" imposed by the carrier "for and in connection with such communication service" are required to "be just and reasonable." *See e.g., AT&T and MCI v. Bell Atlantic et al.*, 14 FCC Rcd 556, 594 (¶87) (Section 201(b) requires that "all 'charges, practices classifications and regulations for and in connection' with their common carrier offerings are just and reasonable.").

TWTC does not allege that Sprint has imposed any unjust and unreasonable charge, practice, classification or regulation "for and in connection with" Sprint's common carrier offerings to the public. TWTC's sole allegation is that Sprint has engaged in what it terms as "unlawful self-help." But, "self-help" plainly does not involve the provision of common carrier services. Rather, "self-help" involves a case where a subscriber who allegedly has not paid its

bills for the telecommunications services provided by a common carrier asks that the Commission enjoin the carrier from terminating service. *Global NAPs, supra* at ¶29 and cases cited therein. As Sprint has repeatedly made clear, "self-help" is simply not involved here since Sprint has not asked that the Commission enjoin TWTC from terminating its provision of access services to Sprint.

At long last, TWTC appears to recognize that "self-help," as the term has traditionally been construed and applied by the Commission, does not constitute a violation of Section 201(b). It, therefore, urges the Commission to craft a new definition for self-help for purposes of deciding its complaint. TWTC's definition of the "self-help" is comprised of the following three elements: (1) an IXC's "failure to pay tariffed rates for exchange access" provided by a LEC; (2) the IXC's "acceptance and use of that [exchange access] service to provide its own interstate telecommunications services"; and (3) the IXC's "refusal to terminate its receipt of access services." TWTC insists that the combination of these three elements "constitutes an unjust and unreasonable practice in violation of Section 201(b) of the Act." JB at 12.

What TWTC has done here is to assume some of the facts of the case at bar; enumerate those facts as the elements necessary to constitute "self-help"; and then claim, nakedly, that the presence of the three elements is a violation of the Act. This hardly amounts to the kind of analysis of the statute and its legislative history that the Commission is asking for here. On the contrary, there is no analysis. TWTC has simply assumed the conclusion that it sought to reach -- namely that these elements constitute a violation.

Even a cursory examination of the elements put forward by TWTC demonstrates the inconsistencies of the test it has created for a violation of the Act with the actual governing statutory language. TWTC's first element -- an IXC's "failure to pay tariffed rates for exchange

access" provided by a LEC is too narrow. There is nothing in the Act which would grant telecommunications carriers, and not other individuals, the right to have their complaints against their carrier-customers seeking to collect the money owed by such carriers for the services received heard by the Commission. Indeed, TWTC's interpretation of Sections 207 and 208 belies the notion that telecommunications carriers have been granted special status as complainants under those sections. As noted, TWTC has repeatedly emphasized in its latest brief, those provisions entitle "any person" to file a complaint with the Commission alleging a violation of the Act. Thus, if, as TWTC insists, the failure by a carrier to pay for exchange access services received from a local exchange carrier is a violation of Section 201(b) of the Act which entitles the local exchange carrier providing such access services to bring a collection action before the Commission, the failure to pay for any good or service received by the carrier would also be a violation of the Section 201(b) of the Act, entitling the "person" providing the good or service to bring a collection action against the carrier before the Commission. It is the failure to pay and not the identity of the supplier or the type of the services provided that, under TWTC's theory, constitutes a violation of Section 201(b) of the Act.

Nonetheless, TWTC's second element is based on the notion that the provision of exchange access services by local exchange carriers to their IXC customers should be treated differently under the Act because an IXC bundles such exchange access services into its own offerings to the public. This element is too broad. An IXC's provision of telecommunications services to the public involves the bundling of a plethora of goods and services provided by a whole host of vendors. For example, Sprint's provision of its telecommunications services involves the use of switching hardware and software obtained from equipment vendors; electricity obtained from the a local utility to power such switches as well as the lights, air-

conditioning etc. in the buildings in which the switches are housed; computers and other devices obtained from various suppliers to monitor the provision of such services and ensure that the necessary data is recorded to enable the carrier to bill for the services provided; and even "paper clips and other office supplies" (JB at 13) obtained from suppliers to ensure that the various documents involved in the provision of service, *e.g.*, contracts, order forms etc., are readily accessible both to Sprint and its customers. TWTC does not -- and Sprint believes cannot -- articulate any principled basis for limiting the Commission's jurisdiction in collection actions to only one of the inputs used by a carrier in the provision of its telecommunications services. Thus, taken to its logical conclusion, TWTC's position that a carrier violates Section 201(b) of the Act when it fails to pay for the goods and services that are necessary in its provision of its telecommunications services would enable any aggrieved supplier of goods and services to a carrier to enlist the Commission as its collection agent. TWTC's suggested distinction is not a limitation on the Commission's jurisdiction, but rather an nearly infinite expansion of such jurisdiction. There is absolutely no support in the Act's statutory language or its legislative history that Congress intended to confer such expansive jurisdiction on the Commission.

The third element in TWTC's suggested new definition is the failure of the IXC customer to terminate the CLEC's provision of access services.[7] Sprint has previously explained that the Commission's access charge regime and the tariff TWTC claims to be controlling are based on a carrier-customer relationship between the provider of access services and the user of such

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[7] This element certainly gives a novel twist to the concept of "self-help." As Commission precedent makes clear, "self-help" is when a non-paying customer insists that the carrier be enjoined from terminating service. Under TWTC's definition, it is the failure of the customer to terminate service that would lead to a finding of "self-help."

services. Thus, as with any carrier-customer relationship, it is the responsibility of the carrier to terminate its provision of services to an customer if the customer fails to comply with terms and conditions of service. *See* Sprint's Initial Brief at 18-21. Sprint will not repeat its argument here.

Nonetheless, Sprint wishes to point out that while TWTC argues in this complaint proceeding that Sprint's failure to terminate its receipt of access services from TWTC is a violation of Section 201(b), in the *Access Reform Proceeding* in CC Docket No. 96-262, TWTC argues that IXCs should not be allowed to refuse to carry traffic either originating or terminating on CLEC networks. According to TWTC, such refusal would be inconsistent with the 1996 Act. Comments of TWTC filed October 29, 1999 at 19-22 and Reply Comments of TWTC filed November 29, 1999 at 14-15. Thus, under TWTC's new standard, Sprint would violate Section 201(b) if it failed to take an action -- termination of service -- that elsewhere it urges the Commission not to allow. Plainly, TWTC's attempt to have it both ways exposes the inherent contradictions in its newly proposed "impermissible self-help" standard.

C. TWTC's Adverse Affect on Interexchange Competition Rationale For The Assertion Of Commission Jurisdiction Is So Amorphous As To Be No Standard At All.

TWTC argues that "the failure to enforce Section 201(b) against Sprint" as requested by TWTC would adversely affect competition in the telecommunications marketplace in general and the interexchange market in particular. This is so, according to TWTC, because "non-paying IXCs will ... enjoy a significant and wholly unwarranted competitive advantage over those IXCs which do pay for access service...." Thus, TWTC insists that the Commission has jurisdiction in this case because the promotion of competition "lies at the heart of the Commission's public interest responsibilities under the Act." JB at 10-11.

TWTC's argument here proves too much. The failure of one IXC to pay for any of the goods or services provided by any of its suppliers would enable the IXC to gain a competitive

advantage over those IXCs that did pay the invoices of their suppliers. For example, if IXC-A paid the vendor for a supply of paper clips but IXC-B refused to pay a vendor for a similar supply of paper clips, IXC-B would gain a competitive advantage over IXC-A and under TWTC's theory would skew competition in the telecommunications marketplace. Thus the "public interest" reason for Commission jurisdiction advanced by TWTC here would authorize the Commission to entertain an action by any vendor supplying any good or service to an IXC, including the supplier of paper-clips, for non-payment of the supplier's invoice by an IXC. Again, it is the non-payment itself rather than the identity of the supplier or the type of goods or services provided that would, according to TWTC, adversely affect competition in the interexchange marketplace. In short, TWTC's suggested standard would confer jurisdiction on the Commission to hear all sorts of complaints by all sorts of suppliers as long as such suppliers could allege an "adverse impact on interexchange competition." TWTC does not provide any statutory support for the unlimited Commission jurisdiction its suggested standard would confer.

CONCLUSION

For the reasons, set forth above as well as in Sprint's earlier pleadings in this proceeding, TWTC's complaint must be dismissed for lack of Commission jurisdiction.

Respectfully submitted,

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December 15, 2000

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **SUPPLEMENTAL RESPONSIVE BRIEF OF SPRINT COMMUNICATIONS COMPANY L.P.** was sent by messenger on this the 15th day of December, 2000 to the below-listed parties.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Comments of AT&T Corp. was served, by the noted methods, the 30th day of November, 2001, on the following:

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The undersigned also certifies that a copy of the foregoing Comments of AT&T Corp. was served, by Email and by Federal Express next day delivery, the 30th day of November, 2001, on the following:

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/s/ Jennifer M. Rubin
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